

### **REMARKS**

This Amendment is in response to the Office Action mailed December 13, 2005. In the Office Action, claims 17-32 and 41-46 were rejected under 35 U.S.C. §103(a). Claims 17, 21, 25, 27, 29, 31, 41 and 44 have been amended. Claims 19-20, 23-24 and 28 have been cancelled without prejudice. Applicants respectfully traverse the rejection and respectfully request reconsideration of the allowability of the pending claims.

#### ***Request for Examiner's Interview***

The Examiner is respectfully requested to contact the undersigned attorney if, after review, none of the pending claims are considered by the Examiner to be in condition for allowance. This telephone conference would greatly facilitate the examination of the present application. The undersigned attorney can be reached at the telephone number listed below.

#### ***Rejection Under 35 U.S.C. § 103***

Claims 17, 18, 21, 22, 25, 26, 29, 30 and 41-45 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Adachi (U.S. Patent No. 6,256,334) in view of Sindhushayana (U.S. Patent No. 6,064,678). Applicants respectfully traverse the rejection because a *prima facie* case of obviousness has not been established.

As the Examiner is aware, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify a reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all of the claim limitations. *See MPEP §2143; see also In Re Fine, 873 F. 2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).* Herein, at a minimum, the combined teachings of the cited references fail to describe or suggest all of the claim limitations.

With respect to independent claim 17, 21, 29, 41 and 44, Applicants respectfully submit that neither Adachi nor Sindhushayana, alone or in combination, suggests the limitation of. *Emphasis added.* Applicants respectfully submit that the limitations similar to those set forth in claims 20 and 28 have been added to independent claims 17, 21, 29, 41 and 44. Therefore, Applicants respectfully request withdrawal of the outstanding rejection as applied by the combined teachings of Adachi and Sindhushayana.

Claims 19, 20, 23, 24, 27, 28, 31 and 46 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Adachi in view of Sindhushayana as applied to respective claims 17, 29 and 44 and further in view of Fisher (U.S. Patent No. 5,889,772). With respect to the addition of limitations applied by claims 19 and 28, to independent claims 17, 21, 29, 41 and 44, Applicants respectfully submit that these claims are in condition for allowance.

For instance, with respect to independent claims 17, 21, 29, 41 and 44, Applicants respectfully submit that neither Adachi, Sindhushayana nor Fischer, alone or in combination,

discloses automatic adjustment of the fragmentation threshold that comprises changing the fragmentation threshold by a fixed quantity and by a divisional factor each time the fragmentation threshold is adjusted. *See Col. 12 lines 6-15*. Rather, Fischer only states the monitor and adjust unit adjusts the current fragmentation threshold level. There is no mention of any divisional factor as claimed.

Claim 32 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Adachi in view of Sindhushayana in further in view of Fisher (U.S. Patent No. 5,889,772) and Fisher (U.S. Patent No. 6,640,325). Applicants respectfully traverse the rejection because a *prima facie* case of obviousness has not been established. Based on the dependency of claim 32 on independent claim 29, believed by Applicants to be in condition for allowance, no further discussion as to the grounds for traverse is warranted. Applicants reserve the right to present such arguments in an Appeal is warranted. Withdrawal of the §103(a) rejection as applied to claim 32 is respectfully requested.

### ***Conclusion***

Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

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By

  
William W. Schaal

Reg. No. 39,018

Tel.: (714) 557-3800 (Pacific Coast)

12400 Wilshire Boulevard, Seventh Floor  
Los Angeles, California 90025

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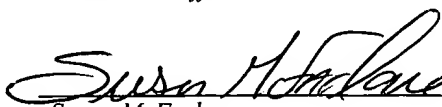
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Susan McFarlane

5/15/2006

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